

REFERENCE TITLE: **fingerprinting board; good cause exceptions**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2254

Introduced by
Representatives Weiers JP: Burges, Clark, Gallardo, Tobin, Tom

AN ACT

AMENDING SECTIONS 41-619.52, 41-619.53 AND 41-619.55, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF FINGERPRINTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 41-619.52, Arizona Revised Statutes, is amended to
3 read:

4 **41-619.52. Board of fingerprinting; organization; meetings**

5 A. The board of fingerprinting is established consisting of the
6 following members:

7 1. A representative of the supreme court who is appointed by the chief
8 justice of the supreme court.

9 2. A representative of the department of economic security who is
10 appointed by the director of the department of economic security.

11 3. A representative of the department of education who is appointed by
12 the superintendent of public instruction.

13 4. A representative of the department of health services who is
14 appointed by the director of the department of health services.

15 5. A representative of the department of juvenile corrections who is
16 appointed by the director of the department of juvenile corrections.

17 B. At its initial meeting and annually thereafter, the board shall
18 elect a chairperson and vice-chairperson from among its members and any other
19 officers that are deemed necessary or advisable.

20 C. The board shall meet at least once each calendar quarter and
21 additionally as the chairperson deems necessary. A majority of the members
22 constitutes a quorum for the transaction of business.

23 D. Board members:

24 1. Serve at the pleasure of the appointing authority.

25 2. Are not eligible for compensation but are eligible for
26 reimbursement of expenses pursuant to title 38, chapter 4, article 2.

27 **3. SHALL HAVE A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO
28 CHAPTER 12, ARTICLE 3.1 OF THIS TITLE.**

29 E. The chief justice, the superintendent of public instruction or a
30 department director may designate an alternate member to represent a member
31 who is appointed pursuant to subsection A by the chief justice, the
32 superintendent of public instruction or a department director, respectively.

33 Sec. 2. Section 41-619.53, Arizona Revised Statutes, is amended to
34 read:

35 **41-619.53. Board of fingerprinting; powers and duties;
36 personnel; liability**

37 A. The board of fingerprinting shall:

38 1. Determine good cause exceptions pursuant to section 41-619.55. The
39 board may appoint a hearing officer to ~~determine RECOMMEND THAT AN APPLICANT~~
40 ~~BE GRANTED OR DENIED A~~ good cause ~~exceptions~~ EXCEPTION AFTER THE HEARING
41 OFFICER CONDUCTS AN EXPEDITED REVIEW OR A GOOD CAUSE EXCEPTION HEARING.

42 2. Adopt rules to implement this article, including rules to establish
43 good cause exceptions for the issuance of fingerprint clearance cards
44 pursuant to section 41-1758.03. This rule making is exempt from the
45 requirements of chapter 6 of this title.

1 3. Administer and enforce this article and rules adopted pursuant to
2 this article.

3 4. Furnish a copy of its rules, on request, to all applicants who
4 petition the board for a good cause exception pursuant to section 41-1758.03
5 and, on request, to licensees, contract providers and state agencies.

6 5. Establish fees.

7 B. IN ORDER TO BE GRANTED A GOOD CAUSE EXCEPTION, A MAJORITY OF THE
8 MEMBERS PRESENT PLUS ANOTHER MEMBER MUST VOTE TO APPROVE THE APPLICATION. If
9 the board ~~or its hearing officer~~ grants a good cause exception, the board
10 shall request in writing that the department of public safety issue a card to
11 the applicant. ~~If the board grants a good cause exception, the board's~~
~~decision must be unanimous.~~

13 C. The board may employ clerical, professional and technical personnel
14 subject to fee monies that are collected and to the budget that is approved
15 by the board members and shall prescribe personnel duties and determine
16 personnel compensation. PERSONNEL EMPLOYED BY THE BOARD MUST HAVE A VALID
17 FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO CHAPTER 12, ARTICLE 3.1 OF THIS
18 TITLE. IF THE APPLICANT IS DENIED A FINGERPRINT CLEARANCE CARD, IN ORDER TO
19 BE EMPLOYED BY THE BOARD, THE BOARD MUST GRANT A GOOD CAUSE EXCEPTION
20 PURSUANT TO THIS ARTICLE BY A UNANIMOUS VOTE.

21 D. IN MAKING ANY RECOMMENDATION TO THE BOARD TO GRANT OR DENY A GOOD
22 CAUSE EXCEPTION, THE HEARING OFFICER SHALL CONSIDER ALL OF THE REASONS AND
23 CRITERIA PRESCRIBED IN SECTION 41-619.55, SUBSECTION E.

24 D. E. Members and employees of the board are not liable for acts done
25 or actions taken by any board member or employee if the members or employees
26 act in good faith following the requirements of this article.

27 Sec. 3. Section 41-619.55, Arizona Revised Statutes, is amended to
28 read:

29 41-619.55. Good cause exceptions: expedited review: hearing:
30 revocation

31 A. The board ~~or its hearing officer~~ shall determine good cause
32 exceptions. The board ~~or its hearing officer~~ shall determine a good cause
33 exception after an expedited review or after a good cause exception hearing.
34 The board ~~or its hearing officer~~ shall conduct an expedited review within
35 twenty days after receiving an application for a good cause exception.

36 B. Within forty-five days after conducting an expedited review, the
37 board ~~or its hearing officer~~ shall hold a good cause exception hearing if the
38 board ~~or its hearing officer~~ determines that the applicant does not qualify
39 for a good cause exception under an expedited review but is qualified to
40 apply for a good cause exception and the applicant submits an application for
41 a good cause exception within the time limits prescribed by rule.

42 C. When determining whether a person is eligible to receive a good
43 cause exception under an expedited review, the board ~~or its hearing officer~~
44 shall consider whether the person has shown to the board's ~~or its hearing~~
45 ~~officer's~~ satisfaction that the person is not awaiting trial on or has not

1 been convicted of committing any of the offenses listed in section
2 41-1758.03, subsection B or that the person is successfully rehabilitated and
3 is not a recidivist. Before granting a good cause exception under an
4 expedited review, the board ~~or its hearing officer~~ shall consider all of the
5 criteria listed in subsection E of this section.

6 D. The following persons shall be present during good cause exception
7 hearings:

- 8 1. The board or its hearing officer.
- 9 2. The person who requested the good cause exception hearing. The
10 person may be accompanied by a representative at the hearing.

11 E. The board ~~or its hearing officer~~ may grant a good cause exception
12 at a hearing if the person shows to the board's ~~or its hearing officer's~~
13 satisfaction that the person is not awaiting trial on or has not been
14 convicted of committing any of the offenses listed in section 41-1758.03,
15 subsection B or that the person is successfully rehabilitated and is not a
16 recidivist. The board ~~or its hearing officer~~ shall grant or deny a good
17 cause exception within eighty days after the good cause exception hearing.
18 Before granting a good cause exception at a hearing the board ~~or its hearing~~
19 ~~officer~~ shall consider all of the following in accordance with board rule:

- 20 1. The extent of the person's criminal record.
- 21 2. The length of time that has elapsed since the offense was
22 committed.

- 23 3. The nature of the offense.
- 24 4. Any applicable mitigating circumstances.
- 25 5. The degree to which the person participated in the offense.
- 26 6. The extent of the person's rehabilitation, including:
 - 27 (a) Completion of probation, parole or community supervision.
 - 28 (b) Whether the person paid restitution or other compensation for the
29 offense.
- 30 (c) Evidence of positive action to change criminal behavior, such as
31 completion of a drug treatment program or counseling.
- 32 (d) Personal references attesting to the person's rehabilitation.

33 F. If the board ~~or its hearing officer~~ grants a good cause exception
34 to a person, the board shall request in writing that the department of public
35 safety issue a fingerprint clearance card to the person.

36 G. The board's staff, under the direction of the executive director of
37 the board, shall review reports it receives of the arrest, charging or
38 conviction of a person for offenses listed in section 41-1758.03 who
39 previously received a fingerprint clearance card. Except as provided by
40 subsection J of this section, the executive director shall report any arrest,
41 charge or conviction of a prohibited crime to the state agencies listed on
42 the applicant's fingerprint clearance card application.

43 H. The board may request in writing that the department of public
44 safety revoke a person's fingerprint clearance card pursuant to section
45 41-1758.04 if the person received a fingerprint clearance card and the person

1 is subsequently convicted of an offense listed in section 41-1758.03,
2 subsection B or C.

3 I. Pending the outcome of a good cause exception determination, the
4 board or its hearing officer may issue interim approval in accordance with
5 board rule to continue working to a good cause exception applicant.

6 J. If the board's staff, under the direction of the executive
7 director, receives a report of an arrest, charging or conviction of a
8 prohibited crime for a person who previously received a fingerprint clearance
9 card pursuant to section 15-1881, the executive director shall not report
10 this information to the state agency that is listed on the applicant's
11 fingerprint clearance card application but shall notify the person issued the
12 fingerprint clearance card of the report.

13 K. The board is exempt from title 41, chapter 6, article 10.